



UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

Venon Unsworth  
Plaintiff,  
vs.  
Elon Musk  
Defendant.

CASE NO. 2:18-CV-8048

COURT'S INSTRUCTIONS TO THE JURY

1 Members of the Jury: Now that you have heard all of the evidence and the arguments of the attorneys,  
2 it is my duty to instruct you as to the law of the case. A copy of these instructions will be sent with you  
3 to the jury room when you deliberate. You must not infer from these instructions or from anything I may  
4 say or do as indicating that I have an opinion regarding the evidence or what your verdict should be. It  
5 is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as  
6 I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you  
7 must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. That means  
8 that you must decide the case solely on the evidence before you. You will recall that you took an oath  
9 to do so.

1 The Plaintiff must persuade you, by the evidence presented in court, that what he is required to prove  
2 is more likely to be true than not true. This is referred to as “the burden of proof.”

3 After weighing all of the evidence, if you cannot decide that something is more likely to be true than  
4 not true, you must conclude that the Plaintiff did not prove it. You should consider all the evidence,  
5 no matter which party produced the evidence.

6 In criminal trials, the prosecution must prove that the defendant is guilty beyond a reasonable doubt.

7 But in civil trials, such as this one, the Plaintiff is required to prove something is more likely to be  
8 true than not true.

1 Certain facts must be proved by clear and convincing evidence, which is a higher burden of  
2 proof. This means the Plaintiff must persuade you that it is highly probable that the fact is true. I will  
3 tell you specifically which facts must be proved by clear and convincing evidence.  
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1 The evidence you are to consider in deciding what the facts are consists of:  
2 1. the sworn testimony of any witness;  
3 2. the exhibits which are received into evidence; and  
4 3. any facts to which the lawyers have agreed.  
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1 In reaching your verdict, you may consider only the testimony and exhibits received into evidence.  
2 Certain things are not evidence, and you may not consider them in deciding what the facts are. I will  
list them for you:

- 3 1. Arguments and statements by lawyers are not evidence. The lawyers are not witnesses. What the  
4 lawyers have said in their opening statements, closing arguments, and at other times is intended to  
5 help you interpret evidence, but it is not evidence. If the facts as you remember them differ from the  
way the lawyers have stated them, your memory of them controls.
- 6 2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their clients to  
object when they believe a question is improper under the rules of evidence. You should not be  
influenced by the objection or by the Court's ruling on it.
- 7 3. Testimony that has been excluded or stricken, or that you have been instructed to disregard, is not  
evidence and must not be considered. In addition, sometimes testimony and exhibits are received  
8 only for a limited purpose; when I have given a limiting instruction, you must follow it.
- 9 4. Anything you may have seen or heard when the Court was not in session is not evidence. You are  
to decide the case solely on the evidence received at the trial.

1 Some evidence may be admitted only for a limited purpose.

2 When I instruct you that an item of evidence has been admitted only for a limited purpose, you must  
3 consider it only for that limited purpose and not for any other purpose.

4 The testimony you have just heard may be considered only for the limited purpose described at trial  
5 and not for any other purpose.  
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1 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony  
2 by a witness about what that witness personally saw or heard or did. Circumstantial evidence is proof  
3 of one or more facts from which you could find another fact. You should consider both kinds of  
4 evidence. The law makes no distinction between the weight to be given to either direct or  
5 circumstantial evidence. It is for you to decide how much weight to give to any evidence.  
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1 In deciding the facts in this case, you may have to decide which testimony to believe and which  
2 testimony not to believe. You may believe everything a witness says, or part of it, or none of it. Proof  
3 of a fact does not necessarily depend on the number of witnesses who testify about it.  
In considering the testimony of any witness, you may take into account:

- 4 1. the opportunity and ability of the witness to see or hear or know the things testified to;
- 5 2. the witness's memory;
- 6 3. the witness's manner while testifying;
- 7 4. the witness's interest in the outcome of the case and any bias or prejudice;
- 8 5. whether other evidence contradicted the witness's testimony;
- 9 6. the reasonableness of the witness's testimony in light of all the evidence; and
- 10 7. any other factors that bear on believability.

11 The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who  
12 testify about it.

1 Whether or not you took notes, you should rely on your own memory of the evidence. Notes are  
2 only to assist your memory. You should not be overly influenced by your notes or those of your  
3 fellow jurors.

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1 You have heard testimony from an expert who testified to opinions and the reasons for his opinions.  
2 This opinion testimony is allowed, because of the education or experience of this witness.  
3 Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and  
4 give it as much weight as you think it deserves, considering the witness's education and experience,  
5 the reasons given for the opinion, and all the other evidence in the case.  
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1 Mr. Unsworth claims that Mr. Musk harmed him by making one or more of the following  
2 statements:

- 3 1. "Never saw this British expat guy who lives in Thailand (sus) at any point when we were in  
4 the caves."
- 5 2. "Sorry pedo guy, you really did ask for it."
- 6 3. "Bet ya a signed dollar it's true."

7 To establish liability for this claim, Mr. Unsworth must prove all of the following:

- 8 1. That Mr. Musk made one or more of the statements to persons other than Mr. Unsworth;
  - 9 2. That these people reasonably understood that the statements were about Mr. Unsworth;
  - 10 3. That these people reasonably understood the statements to mean that Mr. Unsworth was a  
11 pedophile, that is, that Mr. Unsworth had engaged in a sexual act with a child;
  - 12 4. That the statements were false; and
  - 13 5. That Mr. Musk failed to use reasonable care to determine the truth or falsity of the statements.
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1 For Mr. Unsworth to recover, Mr. Musk's statements must have been statements of fact, not  
2 opinion. A statement of fact is one that can be proved to be true or false. In some circumstances, Mr.  
3 Unsworth may recover if a statement phrased as an opinion implies that a false statement of fact is  
4 true.

5 In deciding this issue, you should consider whether the average reader would conclude from  
6 the language of the statement and its context that Mr. Musk was implying that a false statement of  
7 fact is true.  
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1 The word "statement" in these instructions refers to any form of communication or representation,  
2 including spoken or written words or pictures.

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1 It is the duty of the Court to instruct you about the measure of damages. By instructing you on  
2 damages, the Court does not mean to suggest for which party your verdict should be rendered.

3 If you find for the plaintiff, you must determine the plaintiff's damages. The plaintiff has the burden  
4 of proving actual damages by a preponderance of the evidence. The plaintiff has the burden of  
5 proving assumed and punitive damages by clear and convincing evidence. Damages means the  
6 amount of money that will reasonably and fairly compensate the plaintiff for any injury you find was  
7 caused by the defendant.

8 It is for you to determine what damages, if any, have been proved.

9 Your award must be based upon evidence and not upon speculation, guesswork or conjecture.  
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1 **Actual Damages**

2 If Mr. Unsworth has proved all of the above, then he is entitled to recover his actual damages if  
3 he proves that Mr. Musk's wrongful conduct was a substantial factor in causing any of the following:

- 4 1. Harm to Mr. Unsworth's reputation; or
  - 5 2. Shame, mortification, or hurt feelings.
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**Assumed Damages**

Even if Mr. Unsworth has not proved any actual damages for harm to reputation or shame, mortification, or hurt feelings but proves by clear and convincing evidence that Mr. Musk knew the statements were false or that he had serious doubts about the truth of the statements, then the law assumes that Mr. Unsworth's reputation has been harmed and that he has suffered shame, mortification, or hurt feelings. Without presenting evidence of damage Mr. Unsworth is entitled to receive compensation for this assumed harm in whatever sum you believe is reasonable. To award assumed damages, you must award at least a nominal sum, such as one dollar. Assumed damages should be reduced by any amount you have already awarded for actual damages.

## **Punitive Damages**

Mr. Unsworth may also recover damages to punish Mr. Musk if Mr. Unsworth proves by clear and convincing evidence that Mr. Musk either knew the statements were false or had serious doubts about the truth of the statements, and that he acted with malice, oppression, or fraud.

If you decide that Mr. Musk's conduct caused Mr. Unsworth harm, you must decide whether that conduct justifies an award of punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

You may award punitive damages only if Mr. Unsworth proves by clear and convincing evidence that Mr. Musk knew the statements were false or that he had serious doubts about the truth of the statements, and that Mr. Musk engaged in that conduct with malice, oppression, or fraud.

"Malice" means that Mr. Musk acted with intent to cause injury or that Mr. Musk's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that Mr. Musk's conduct was despicable and subjected Mr. Unsworth to cruel and unjust hardship in knowing disregard of his rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that Mr. Musk intentionally misrepresented or concealed a material fact and did so intending to harm Mr. Unsworth.

There is no fixed formula for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following factors in determining the amount:

(a) How reprehensible was Mr. Musk's conduct? In deciding how reprehensible Mr. Musk's conduct was, you may consider, among other factors:

1. Whether the conduct caused physical harm;
2. Whether Mr. Musk disregarded the health or safety of others;
3. Whether Mr. Unsworth was financially weak or vulnerable and Mr. Musk knew Mr. Unsworth was financially weak or vulnerable and took advantage of him;
4. Whether Mr. Musk's conduct involved a pattern or practice; and
5. Whether Mr. Musk acted with trickery or deceit.

(b) Is there a reasonable relationship between the amount of punitive damages and Mr. Unsworth's harm or between the amount of punitive damages and potential harm to Mr. Unsworth that Mr. Musk knew was likely to occur because of his conduct?

1 (c) In view of Mr. Musk's financial condition, what amount is necessary to punish him and  
2 discourage future wrongful conduct? You may not increase the punitive award above an amount that  
3 is otherwise appropriate merely because Mr. Musk has substantial financial resources.

4 Punitive damages may not be used to punish Mr. Musk for the impact of his alleged  
5 misconduct on persons other than Mr. Unsworth.  
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1 Before you begin your deliberations, elect one member of the jury as your presiding juror.  
2 The presiding juror will preside over the deliberations and serve as the spokesperson for the jury in  
3 court.

4 You shall diligently strive to reach agreement with all of the other jurors if you can do so.  
5 Your verdict must be unanimous.

6 Each of you must decide the case for yourself, but you should do so only after you have  
7 considered all of the evidence, discussed it fully with the other jurors, and listened to their views. It  
8 is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do  
9 so after having made your own conscientious decision. Do not be unwilling to change your opinion if  
10 the discussion persuades you that you should. But do not come to a decision simply because other  
11 jurors think it is right, or change an honest belief about the weight and effect of the evidence simply  
12 to reach a verdict.  
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1 A verdict form has been prepared for you. After you have reached unanimous agreement on a  
2 verdict, your presiding juror should complete the verdict form according to your deliberations, sign  
3 and date it, and advise the clerk that you are ready to return to the courtroom.  
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1 If it becomes necessary during your deliberations to communicate with me, you may send a note  
2 through the bailiff, signed by your presiding juror or by one or more members of the jury. No  
3 member of the jury should ever attempt to communicate with me except by a signed writing; I will  
4 communicate with any member of the jury on anything concerning the case only in writing, or here  
5 in open court. If you send out a question, I will consult with the parties before answering it, which  
6 may take some time. You may continue your deliberations while waiting for the answer to any  
7 question. Remember that you are not to tell anyone—including me—how the jury stands,  
8 numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.  
9 Do not disclose any vote count in any note to the court.  
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